



**THE CITY OF NEW YORK
LAW DEPARTMENT**
100 CHURCH STREET
NEW YORK, NY 10007

ZACHARY W. CARTER
Corporation Counsel

JOSEPH A. MARUTOLLO
Assistant Corporation Counsel
Phone: (212) 356-2334
Fax: (212) 356-3509
jmarutol@law.nyc.gov

January 28, 2015

BY E.C.F.

Honorable Lorna G. Schofield
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Keith Thompson v. Officer McEnery, Shield #9432546*, 14 Civ. 6509 (LGS)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department, and the attorney assigned to the defense of the above-referenced matter.¹ Pursuant to the Court's December 4, 2014 order, defendant Police Officer McEnery (hereinafter "defendant") submits this letter regarding the status of discovery.

On November 10, 2014, defendant filed his motion to dismiss the complaint, in the entirety, pursuant to Fed. R. Civ. P. 12(b)(6). *See* Docket Entry Nos. 13 through 16. On November 18, 2014, plaintiff filed his opposition to defendant's Fed. R. Civ. P. 12(b)(6) motion. The motion is fully briefed and is pending a decision by the Court.

Additionally, to date, plaintiff has not sought to amend the complaint. Indeed, the deadline for amended pleadings was December 4, 2014. *See* Civil Case Management Plan and Scheduling Order.

¹ This case has been assigned to Assistant Corporation Counsel Daniel Saavedra, who is presently awaiting admission to the bar and is handling this matter under supervision. Mr. Saavedra may be reached directly at (212) 356-0892.

Fact discovery is to be completed no later than April 3, 2015. *See id.*² Document discovery has been exchanged between the parties. Plaintiff has not executed any medical releases, as plaintiff indicates that he did not suffer any physical injuries in connection with the incident alleged in the complaint. *See* Plaintiff's Reply to Document Requests, dated December 8, 2014, p. 2, ¶ 5("Answer to interrogatory number five...there are no medical, psychiatric or psychological treatment, no property damage or loss of income.").

Moreover, defendant respectfully informs the Court that plaintiff's deposition has been scheduled for March 27, 2015. Defendant also respectfully informs the Court that as of January 28, 2015, the parties do not intend to engage in settlement negotiations.

Finally, should the Court deny defendant's pending Fed. R. Civ. P. 12(b)(6) motion, defendant respectfully informs the Court that defendant reserves the right to file a motion for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Defendant thanks the Court for its consideration of this matter.

Respectfully submitted,

/s/

Joseph A. Marutollo
Assistant Corporation Counsel
Special Federal Litigation Division

cc: Keith Thompson, Plaintiff *Pro Se* (By First Class Mail)
50-14 Broadway, Apt. 4-D
Woodside, NY 11377

² Defendant respectfully notes that the Court previously denied defendant's request to stay discovery pending defendant's potentially dispositive motion.